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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 CATHLEEN LAWLER,
12 Plaintiff

13 v.

14 NANCY A. BERRYHILL¹, Acting
15 Commissioner of Social Security,
16 Defendant.

Case No. 8:16-cv-00713-GJS

**MEMORANDUM OPINION AND
ORDER**

17 **I. PROCEDURAL HISTORY**

18 Plaintiff Cathleen Lawler (“Plaintiff”) filed a complaint seeking review of
19 Defendant Commissioner of Social Security’s (“Commissioner”) denial of his
20 application for Disability Insurance Benefits (“DIB”) and Social Security Income
21 (“SSI”). The parties filed consents to proceed before the undersigned United States
22 Magistrate Judge [Dkts. 11 and 12] and briefs addressing disputed issues in the case
23 [Dkt. 17 (“Pltf.’s Br.”); Dkt. 19 (“Def.’s Br.”)]. The Court has taken the parties’
24 briefing under submission without oral argument. For the reasons discussed below,
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26 ¹ The Court notes that Nancy A. Berryhill became the Acting Commissioner of the
27 Social Security Administration on January 23, 2017. Accordingly, pursuant to Rule
28 25(d) of the Federal Rules of Civil Procedure, the Court orders that the caption be
amended to substitute Nancy A. Berryhill for Carolyn W. Colvin as the defendant in
this action.

1 the Court finds that this matter should be remanded for further proceedings.

2 **II. ADMINISTRATIVE DECISION UNDER REVIEW**

3 On February 15, 2013, Plaintiff filed an application for both DIB and SSI,
4 alleging disability as of September 23, 2012. [Dkt. 15, Administrative Record
5 (“AR”) 88, 89.] The Commissioner denied her initial claim for benefits and then
6 denied her claim upon reconsideration. [AR 63, 87.] On September 8, 2014,
7 Administrative Law Judge (“ALJ”) John Kays held a hearing. [AR 25, 8-24.] On
8 December 17, 2014, the ALJ issued a decision denying Plaintiff’s request for
9 benefits. [AR 8-22.] Plaintiff requested review from the Appeals Council, and on
10 March 28, 2016, the Appeals Council denied review. [AR 1-5.]

11 Applying the five-step sequential evaluation process, the ALJ found that
12 Plaintiff was not disabled. *See* 20 C.F.R. § 404.1520(b)-(g)(1); 416.920(b)-(g)(1).
13 At step one, the ALJ concluded that Plaintiff had not engaged in substantial gainful
14 activity since September 23, 2012, the alleged onset date. [AR 13.] At step two, the
15 ALJ found that Plaintiff suffered from the following severe impairments: morbid
16 obesity, bilateral knee degenerative joint disease, status post right knee arthroscopic
17 surgery; and right foot degenerative joint disease. [*Id.* (citing 20 C.F.R. §§
18 404.1520(c) and 416.920(c).] Next, the ALJ determined that Plaintiff did not have
19 an impairment or combination of impairments that meets or medically equals the
20 severity of one of the listed impairments. [AR 14 (citing 20 C.F.R. Part 404,
21 Subpart P, Appendix 1; 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526, 416.920(d),
22 416.925, and 416.926).]

23 The ALJ found that Plaintiff had the following residual functional capacity
24 (RFC):

25 [T]o perform medium work as defined in 20 CFR
26 404.1567(c) and 416.967(c) except: lifting no more than
27 50 pounds occasionally, 25 pounds frequently; restricted
to standing and walking 4 hours; sitting 6 hours.

28 [AR 15.] Applying this RFC, the ALJ found that Plaintiff was able to perform her

1 past relevant work as a Home Health Aide. [AR 18.]

2 III. GOVERNING STANDARD

3 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner's decision to
4 determine if: (1) the Commissioner's findings are supported by substantial evidence;
5 and (2) the Commissioner used correct legal standards. *See Carmickle v. Comm'r*
6 *Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d
7 1071, 1074 (9th Cir. 2007). Substantial evidence is "such relevant evidence as a
8 reasonable mind might accept as adequate to support a conclusion." *Richardson v.*
9 *Perales*, 402 U.S. 389, 401 (1971) (internal citation and quotations omitted); *see*
10 *also Hoopai*, 499 F.3d at 1074.

11 IV. DISCUSSION

12 Plaintiff contends that the ALJ erred in failing to consider the entirety of the
13 opinion of Dr. John Chung, a consultative examiner who performed an Orthopedic
14 Evaluation of Plaintiff. [Pltf.'s Br. at 6.] Dr. Chung assessed Plaintiff's limitations
15 as follows:

16 Based on the objective finding, it is my opinion that she
17 had no limitation to use both upper extremities to perform
18 any task at or above shoulder level. She has had no
19 limitation of activity, which requires agility. In an 8-hour
20 day, she is able to stand and walk 4 hours and sit for 6
21 hours. She is able to carry and lift 25 pounds on a
frequent basis and 50 pounds on an occasional basis.
There is no postural limitation. However, there is
environmental limitation suggest prolonged standing
walking as well as walking on even ground going up and
downstairs of steps.

22 [AR 321 (italics added).]

23 The ALJ addressed Dr. Chung's findings, and accorded them "great weight,"
24 incorporating the bulk of his findings into Plaintiff's RFC. However, as Plaintiff
25 correctly notes, the troubling sentence highlighted above – frankly, an *incoherent*
26 sentence – was not discussed, or even referenced, in the ALJ's opinion. It follows
27 that the ALJ did not consider the impact, if any, the final sentence might have had
28 on his assessment of the severity of Plaintiff's impairments and any consequent

1 limitations in her ability to, in this case, ambulate effectively. And, as Plaintiff
2 correctly notes, if the ALJ had found Plaintiff to have additional limitations on her
3 ability to ambulate, he would have had to take such limitations into consideration
4 when deciding if her impairments, considered singly or in combination, met the
5 requirements of a listed impairment. Therefore, as explained further below, the
6 Court finds that remand is appropriate on Issues 1 and 2 of Plaintiff's Brief.

7 A claimant's RFC is the most a claimant can still do despite her limitations.
8 *Smolen v. Chater*, 80 F.3d 1273, 1291 (9th Cir. 1996) (citing 20 C.F.R. §
9 416.945(a)); Social Security Ruling ("SSR") 96-8p (an RFC assessment is ordinarily
10 the "maximum remaining ability to do sustained work activities in an ordinary work
11 setting on a regular and continuing basis," meaning "8 hours a day, for 5 days a
12 week, or an equivalent work schedule"). In assessing a claimant's RFC, the ALJ
13 must consider all of the relevant evidence in the record. *See* 20 C.F.R. §§
14 416.945(a)(2), (3); 404.1545(a)(2), (3). If an RFC assessment conflicts with an
15 opinion from a medical source, the ALJ "must explain why the opinion was not
16 adopted." SSR 96-8p; *see also Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir.
17 1984) (explaining that an ALJ is not required to discuss all the evidence presented,
18 but must explain the rejection of uncontroverted medical evidence, as well as
19 significant probative evidence). The opinion of an examining doctor, such as Dr.
20 Chung, "can be rejected only for specific and legitimate reasons that are supported
21 by substantial evidence in the record." *Regennitter v. Comm'r of Soc. Sec. Admin.*,
22 166 F.3d 1294, 1298-99 (9th Cir. 1999) (internal citation omitted).

23 Here, while the ALJ gave Dr. Chung's opinion "great weight," he did not
24 provide an interpretation of the potential "environmental limitation" referenced in
25 the last sentence as it relates to "walking on even ground going up and downstairs of
26 steps." In fact, there is no reference to this sentence at all.

27 Plaintiff contends that the only plausible reading of Dr. Chung's final
28 sentence is that he concluded that Plaintiff is limited to walking on even ground *and*

1 limited in her ability do up and down stairs, and is therefore “most likely not able to
2 walk on *uneven* ground.” [Pltf.’s Brf. at 7 (emphasis added).] And if Plaintiff is
3 unable to “ambulate effectively” because of this purported limitation, she meets the
4 criteria of listing 1.01A, inasmuch as an example of “ineffective ambulation” is an
5 “inability to walk a block at a reasonable pace on rough or uneven surfaces.” *See*
6 *also* Listing 1.00B2b.

7 In opposition, the Commissioner argues that Dr. Chung’s opinion was
8 implicitly taken into consideration because Plaintiff’s RFC (with the four hour
9 standing/walking limitation) did not allow for “prolonged” standing or walking.²
10 The Commissioner also contends that “[t]he more rational” interpretation of the
11 balance of the italicized sentence is that Dr. Chung suggested that “plaintiff should
12 walk on even ground when going up and down steps.” [Def.’s Brief at 3-4.]

13 The Court does not find that the Commissioner’s interpretation is
14 reasonable. The sentence is nonsensical. How does one walk on even ground while
15 going up and down steps? And while Plaintiff’s interpretation is perhaps plausible,
16 it is still not clear (1) what Dr. Chung really intended, and (2) even if he intended to
17 say that Plaintiff could not walk on uneven surfaces (or on stairs), that the ALJ, had
18 he considered this portion of Dr. Chung’s opinion would not, still, have discounted
19 it. It appears there is ample evidence in the record to provide a specific, legitimate
20 reason for doing so, but it is not within the Court’s province to make any such
21 finding. As the Commissioner correctly notes, “[t]he ALJ is the final arbiter with
22 respect to resolving ambiguities in the medical evidence.” [Def.’s Brf. at 2 (quoting
23 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041-42 (9th Cir. 2008)).] But where the ALJ
24 did not even acknowledge the existence of an ambiguity, the Court cannot presume

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26 ² Even reading this sentence as a limitation *against* prolonged standing or walking –
27 which is logical given the context – requires mental manipulation, *i.e.*, the
28 assumption that Dr. Chung’s evaluation “suggest[ed] **no** prolonged” standing or
walking where “no” did not appear in the sentence.

1 that he resolved it, one way or the other.

2 In sum, because the ALJ did not offer any specific explanation as to why he
3 ignored, and thus implicitly rejected, this portion of Dr. Chung's findings, the ALJ's
4 determination of the severity of Plaintiff's impairments and consequent RFC
5 assessment is not supported by substantial evidence. *See Vincent*, 739 F.2d at 1394-
6 95; *see also Regennitter*, 166 F.3d at 1298-99. This error warrants reversal.³

7 V. CONCLUSION

8 The decision of whether to remand for further proceedings or order an
9 immediate award of benefits is within the district court's discretion. *Harman v.*
10 *Apfel*, 211 F.3d 1172, 1175-78 (9th Cir. 2000). When no useful purpose would be
11 served by further administrative proceedings, or where the record has been fully
12 developed, it is appropriate to exercise this discretion to direct an immediate award
13 of benefits. *Id.* at 1179 ("the decision of whether to remand for further proceedings
14 turns upon the likely utility of such proceedings"). But when there are outstanding
15 issues that must be resolved before a determination of disability can be made, and it
16 is not clear from the record the ALJ would be required to find the claimant disabled
17 if all the evidence were properly evaluated, remand is appropriate. *Id.*

18 The Court finds that remand is appropriate because the circumstances of this
19 case suggest that further administrative review could remedy the ALJ's errors. *See*
20 *INS v. Ventura*, 537 U.S. 12, 16 (2002) (upon reversal of an administrative
21 determination, the proper course is remand for additional agency investigation or
22 explanation, "except in rare circumstances"); *Treichler v. Comm'r of Soc. Sec.*
23 *Admin.*, 775 F.3d 1090, 1101 (9th Cir. 2014) (remand for award of benefits is

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25 ³ The Court has not reached the remaining issue raised by Plaintiff regarding
26 whether the ALJ properly considered the opinion of Plaintiff's treating physician
27 (and any related duty to fully develop the record), except as to determine that
28 reversal with a directive for the immediate payment of benefits would not be
appropriate at this time. However, the ALJ should address this additional contention
of error in evaluating the opinion evidence on remand.

1 inappropriate where “there is conflicting evidence, and not all essential factual
2 issues have been resolved”); *Harman*, 211 F.3d at 1180-81.

3 For all of the foregoing reasons, **IT IS ORDERED** that:

- 4 (1) the decision of the Commissioner is REVERSED and this matter
5 REMANDED pursuant to sentence four of 42 U.S.C. § 405(g) for further
6 administrative proceedings consistent with this Memorandum Opinion and
7 Order; and
8 (2) Judgment be entered in favor of Plaintiff.

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10 **IT IS SO ORDERED.**

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12 DATED: April 26, 2017



13 GAIL J. STANDISH
14 UNITED STATES MAGISTRATE JUDGE
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